IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 940 of 2004

In

Notice of Motion NO.2711 of 2004

In

L.C.suit No.3247 of 2004

Indrakumar Sundarji Parmar ...Appellant

V/s

The Municipal Corporation of

Greater Bombay, Bombay ... Respondent

Shri S.S.Redekar for Appellant

Ms Geeta Jogalekar for Respondetn

CORAM:A.S.OKA,J.

DATED:18th Feb. 2005

ORAL JUDGMENT :-

1. The Advocate appearing for the Appellant plaintiff has placed on record an Undertaking of the Appellant, his wife, daughter in law and his son. In the Undertaking they have stated that they will remove the suit structure at their own costs on or before 31-5-2005. They have also stated that they will withdraw L.C.suit NO.3247 of 2004 pending in the

trial Court.

2. The learned Advocate for the Appellant submitted that in view of this solemn undertaking given by the Appellant and his adult family members, the Appellant be granted time to remove the suit structure upto 31-5-2005. He states that Undertaking is given by all the adult members of the family of the Appellant. I have also heard the learned Advocate appearing for the Respondent.

3. The Undertaking is accepted. Undertaking is taken on record and marked 'X' for identification. In view of the Undertaking I pass the following order:

i. The appeal is dismissed as withdrawn with no order as to costs.

ii. L.C.Suit No.3247 of 2004 pending in the trial Court is also dismissed as withdrawn with no order as to costs.

iii. Notwithstanding dismissal of the suit and appeal, the Respondent Corporation will not demolish the suit structure till 31-5-2005.

iv. The Appellants are granted time to remove the suit structure till 31-5-2005

v. Till 31-5-2005 or till the date of removing the structure, the Appellant will not create any third party interest in respect of the suit structure or will not part with possession of the structure.

vi. In case the suit structure is not removed by the Appellant on or before 31-5-2005, it will be open for the Respondent Corporation to immediately demolish the same.

vii. Notwithstanding dismissal of the suit and demolition of the structure it will be open for the Appellant to apply to the competent authority for grant of permanent accommodation in the event he is entitled to such accommodation in accordance with law. If such application is made, the concerned authority will decide the said Application without being influenced by the dismissal of the suit.

viii The trial Court will pass formal order of dismisal of the suit on production of authenticated copy of this order.

ix Parties to act on authenticated copy of this order.

(A.S.OKA,J.)